



**Federal Communications Commission
Washington, D.C. 20554**

DA 20-1375

In Reply Refer To:
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In re: K288HH, San Fernando, CA
File No. BNPFT-20180507AAH
Facility ID No. 203012

Second Petition for Reconsideration

Dear Counsel:

We have before us a “Petition for Reconsideration and Reinstatement *Nunc Pro Tunc*” (2020 Petition) filed on April 6, 2020, by Levine/Schwab Partnership dba Schwab Multimedia LLC (Applicant or Schwab), licensee of Station KWIF(AM), Culver City, California.¹ The 2020 Petition seeks review of a staff decision dismissing the application to construct a new FM translator station on channel 288 (105.5 MHz) at San Fernando, California (Application).² For the reasons discussed below, we dismiss the 2020 Petition.

¹ Petition for Reconsideration and Reinstatement *Nunc Pro Tunc*, Levine/Schwab Partnership dba Schwab Multimedia LLC, Pleading No. 0000111592 (filed Apr. 6, 2020) (2020 Petition).

² See Construction Permit No. BNPFT-20180507AAH. The staff accepted the Application for filing on May 10, 2018. See *Broadcast Applications*, Public Notice, Report No. 29233 (MB May 10, 2018). See also Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Levine/Schwab Partnership dba Schwab Multimedia LLC, File No. BNPFT-20180507AAH (Feb. 6, 2020) (2020 Decision) (finding that Station KBUE(FM) listeners located inside the 60 dB μ contour of the proposed translator are predicted to receive interference from the facilities proposed in the Application).

Background. Schwab filed the Application to construct a new FM translator on May 7, 2018.³ LBI Radio License LLC (LBI), licensee of FM translator station KBUE(FM) (Station KBUE(FM)), Long Beach, California, filed a Petition to Deny against the Application identifying seven Station KBUE(FM) listeners who were predicted to experience interference from the new translator.⁴ On May 24, 2018, Schwab amended the Application, proposing to operate the translator with reduced power to eliminate the purported interference to LBI's Station KBUE(FM) listeners.⁵ LBI then filed a Reply in support of its Petition to Deny in which it identified seven additional Station KBUE(FM) listeners who were predicted to experience interference from the proposed translator at the reduced power level.⁶

On February 4, 2019, the Media Bureau (Bureau) dismissed the amended Application after determining that the proposed translator will interfere with the listening audiences of Station KBUE(FM) in violation of Section 74.1204(f) of the Commission's rules (Rules).⁷ Schwab then sought reconsideration and reinstatement of the Application *nunc pro tunc* on February 15, 2019, proffering another amended Application, proposing to reduce power of the proposed translator to one watt to eliminate interference for LBI's listeners.⁸ The Bureau granted both reconsideration and the amended Application on February 26, 2019.⁹

On March 22, 2019, LBI sought reconsideration of the February 26 Decision, arguing that the proposed FM translator, as modified, will still interfere with the listening audiences of Station KBUE(FM) in violation of Section 74.1204(f) of the Rules.¹⁰ The Bureau dismissed the amended Application on February 6, 2020, after determining that the proposed facilities, as modified, failed to eliminate the predicted interference.¹¹ Schwab then filed a *second* petition for reconsideration on April 6, 2020, attaching an additional engineering amendment again designed to eliminate the predicted interference to station KBUE(FM) listeners at Long Beach, California.¹² Schwab cites to no authority for granting it a second opportunity to correct its original proposal.

Discussion. We dismiss Schwab's second petition for reconsideration as procedurally defective. There is no provision in the Rules for an applicant to file multiple petitions for reconsideration or multiple

³ See Application.

⁴ See Petition to Deny filed by LBI Radio License LLC, File No. BNPFT-20180507AAH (filed May 15, 2018).

⁵ See Application.

⁶ See Reply filed by LBI Radio License LLC, File No. BNPFT-20180507AAH (filed May 31, 2018).

⁷ See Letter from James D. Bradshaw, Deputy Chief, Audio Division, FCC Media Bureau, to Levine/Schwab Partnership dba Schwab Multimedia LLC, File No. BNPFT-20180507AAH (Feb. 4, 2019) (Initial Decision) (dismissing the Application upon finding that Station KBUE(FM) listeners located inside the 60 dB μ contour of the proposed translator are predicted to receive interference from the proposed facilities); 47 CFR § 74.1204(f).

⁸ See Petition for Reconsideration and Reinstatement *Nunc Pro Tunc*, File No. BNPFT-20180507AAH (filed Feb. 15, 2019) (2019 Petition).

⁹ See *Broadcast Actions*, Public Notice, Report No. 49434 (rel. Mar. 1, 2019) (February 26 Decision).

¹⁰ Petition for Reconsideration filed by LBI Radio License LLC, File No. BNPFT-20180507AAH (filed Mar. 22, 2019). LBI submitted documentation demonstrating that seven additional Station KBUE(FM) listeners are predicted to experience interference from the proposed translator at the reduced power level. See Reply in Support of Petition for Reconsideration filed by LBI Radio License LLC, File No. BNPFT-20180507AAH (filed Apr. 17, 2019).

¹¹ 2020 Decision.

¹² 2020 Petition.

attempts to correct defective applications.¹³ Under the Commission’s longstanding policy concerning defective applications, applicants are afforded one opportunity to correct defective applications and seek *nunc pro tunc* reinstatement.¹⁴ In the *Defective Policy Public Notice*, the Commission announced that it would reinstate applications *nunc pro tunc* only once and only where a relatively minor curative amendment was filed within 30 days of the date of the dismissal.¹⁵ The *Defective Policy Public Notice* also directly addressed the possibility of multiple corrective amendments and noted that “if the same application is returned or dismissed a second time, it will not be accorded *nunc pro tunc* reconsideration rights.”¹⁶ Schwab’s 2019 Petition was its first and only permissible attempt to correct the deficiencies in the Application through a corrective amendment and it sought reconsideration and *nunc pro tunc* reinstatement pursuant to this policy. However, its amendment failed to cure the defect in its original Application, and can no longer be corrected.

Conclusion/Action. Accordingly, in light of the above discussion, the Petition for Reconsideration and Reinstatement *Nunc Pro Tunc* filed by Levine/Schwab Partnership dba Schwab Multimedia LLC on April 6, 2020, IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief
Audio Division
Media Bureau

¹³ See 47 U.S.C. § 405; 47 CFR § 1.106 (providing for the filing of petitions for reconsideration within 30 days of public notice of the action taken). *But see A.G.P., Inc.*, 11 FCC Rcd 4628, 4629 (1996), citing *Iola Broadcasting Company*, 2 FCC Rcd 439 (1966); and *Brainerd Broadcasting Company*, 25 RR 297 (1963) (repeated petitions for reconsideration not permitted).

¹⁴ Public Notice, “Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications,” FCC 84-366, released August 2, 1984, 56 P&F Rad.Reg.2d (P&F) 776 (1984) (as subsequently published in the Federal Register, 49 Fed. Reg. 47331, 47332 (Dec. 3, 1984)) (*Defective Policy Public Notice*). See also *In the Matter of Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5021-22 (2010) (restating Commission policy that an applicant has one opportunity to perfect its application after it is dismissed); *Letter from Peter H. Doyle, Chief, Media Bureau, Audio Division, to John Joseph McVeigh, Esq.*, File No. BPED-20070906AGB, 25 FCC Rcd 3572, n.25 (Apr. 6, 2010) citing *Public Notice* (providing a second opportunity on reconsideration to cure application defects would be unfair to other applicants, would add to processing delays and would encourage the filing of incomplete and poorly prepared applications); *Letter from Peter H. Doyle, Chief, Media Bureau, Audio Division, to Gerald R. Proctor, c/o, Dan J. Albert, Esq.*, File No. BNPFT-20030812AAV, 20 FCC Rcd 12345, 12347, notes 12, 13 (July 20, 2005) citing *Defective Policy Public Notice*.

¹⁵ *Id.* at 47332.

¹⁶ *Id.*